

This record is a partial extract of the original cable. The full text of the original cable is not available.

101135Z Jun 03

C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 003738

SIPDIS

DEPARTMENT FOR EUR/SE

E.O. 12958: DECL: 06/10/2008

TAGS: [PGOV](#) [PREL](#) [PHUM](#) [TU](#)

SUBJECT: PROSECUTOR OPENS TWO CASES AGAINST WRITER FOR
10-YEAR-OLD WORKS

REF: A. 02 ANKARA 6116

[1](#)B. ANKARA 2909

(U) Classified by acting Political Counselor Nicholas S. Kass.
Reason: 1.5(b)(d).

[1](#)1. (C) Summary: An Ankara prosecutor has opened two cases against writer and scholar Fikret Baskaya for works originally published 10 years ago. One of the cases involves a book for which Baskaya was convicted and imprisoned in 1994; the European Court of Human Rights later ruled in Baskaya's favor in the case. A Justice Ministry contact said Minister Cicek opposes the indictments; he also averred that training programs and precedent-setting appeals court rulings will gradually prevent such cases in the future. Nevertheless, a human rights attorney argued that despite such good intentions, the GOT judicial bureaucracy is unwilling to discipline prosecutors who abuse their authority. End Summary.

Prosecutor Opens Two Cases Against Writer

[1](#)2. (U) An Ankara State Security Court (SSC) prosecutor in May opened two separate court cases against Fikret Baskaya:

-- One case is related to the new edition of Baskaya's book, "Collapse of the Paradigm: An Introduction to the Criticism of the Official Ideology." Baskaya in 1993 was convicted for the original publication of the book, and served 15 months in prison in 1994-95. The European Court of Human Rights (ECHR) later ruled that Baskaya's conviction violated the European Convention on Human Rights and ordered compensation. As in the 1993 trial, Baskaya is now charged with violating Article 8 of the Anti-Terror Law, which outlaws "written and oral propaganda...aimed at damaging the indivisible unity of the State." If convicted, he could be sentenced to 2-5 years imprisonment.

-- The other case is related to the re-publishing of an article Baskaya wrote in 1993 about the Sivas Massacre, which took place that year (involving the deaths of some 37 Turkish Alevis in a hotel fire set by rioting Sunnis). The article is included in a new book of selected writings. Baskaya was not charged when the article was first published in 1993, but now stands accused of violating Article 159 of the Turkish Penal Code, which forbids speech that insults the State or its institutions. If convicted, he could be sentenced to 1-6 years imprisonment.

Embassy Raises Concerns

[1](#)3. (C) On June 6 we raised concerns about these cases with Abdulkadir Kaya, Ministry of Justice Director General for International Relations. We noted that the GOT has adopted wide-ranging legal reforms over the past two years in its efforts to qualify for EU membership. Outside observers were encouraged by these efforts, and had hoped that these types of speech cases would end. Unfortunately, the charges against Baskaya raise doubts about the depths of the reforms related to free speech. Baskaya is being charged for works published years ago, and is being retried for his "Paradigm" book despite having won his case in the ECHR. We noted that the GOT revised Article 159 in August 2002 (reftel A) and was considering revoking Article 8 (reftel B), but prosecutors do not appear to have changed their practices.

14. (C) Kaya said he is "puzzled" by the indictments, particularly in light of the ECHR ruling. He noted that the GOT has been criticized for failing to abide by ECHR rulings and this case will only complicate matters. Kaya said he discussed both cases with the prosecutor, who asked him for a Turkish translation of the ECHR ruling. He said judges and prosecutors in Turkey are generally uninformed about the latest reforms and ECHR rulings. The Justice Ministry is addressing the problem with a series of seminars, focused particularly on SSC judges and prosecutors, but it will take time to change attitudes. He said the SSC will likely convict Baskaya, but predicted the rulings will be overturned on appeal. He said appeals court judges tend to be more attuned to the reform process, and their rulings gradually set precedents for the lower courts. In the immediate term, "there is not much the Justice Ministry can do," he said. "Prosecutors and judges are independent" and there is no restriction against prosecuting someone for writings published years ago, regardless of ECHR decisions.

Human Rights Lawyer: Prosecutors Should be Held Accountable

15. (C) Yusuf Alatas, attorney and Human Rights Association vice chairman, had a different view when we discussed the Baskaya cases with him June 9. Alatas argued that "judicial independence does not mean prosecutors and judges are responsible to no one." He noted that the Supreme Board of Judges and Prosecutors has the formal authority to sanction judicial officials who act improperly, and averred that the Board could prevent these types of "harassment" cases if it so chose. The problem, he said, is due primarily to two factors: 1) the Board is dominated by "nationalist" jurists -- along with, he asserted, a significant "Islamist" minority -- and its members tend to oppose EU membership and human rights reform; and 2) the Justice Minister and his Undersecretary, who are Board members, have the power to change the Board's approach, but are unwilling to use it.

Comment

16. (C) These two, simultaneous cases against Baskaya are the latest reminder that the GOT's impressive legislative reforms have not changed the practices of a powerful bureaucracy obsessed with perceived threats to the State. The case against the "Paradigm" book is particularly troubling because it reflects a continued disregard for the ECHR among Turkish judges, an attitude that in the past has raised doubts about Turkey's EU qualifications.
PEARSON